

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VILBORG FIGUEROA,) NO. ED CV 10-385-E
Plaintiff,)
v.)
MICHAEL J. ASTRUE, COMMISSIONER) MEMORANDUM OPINION
OF SOCIAL SECURITY ADMINISTRATION,) AND ORDER OF REMAND
Defendant.)

)

Pursuant to sentence four of 42 U.S.C. section 405(g), IT IS
HEREBY ORDERED that Plaintiff's and Defendant's motions for summary
judgment are denied and this matter is remanded for further
administrative action consistent with this Opinion.

PROCEEDINGS

Plaintiff filed a complaint on March 19, 2010, seeking review of
the Commissioner's denial of benefits. The parties filed a consent to
proceed before a United States Magistrate Judge on April 9, 2010.
Plaintiff filed a motion for summary judgment on August 23, 2010.

1 Defendant filed a cross-motion for summary judgment on September 20,
2 2010. The Court has taken both motions under submission without oral
3 argument. See L.R. 7-15; "Order," filed March 23, 2010.

4

5 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

6

7 Plaintiff asserts disability based on alleged mental problems
8 (Administrative Record ("A.R.") 42-53, 109-20). In a written report,
9 state agency physician Dr. H.M. Skopec opined that Plaintiff's mental
10 problems markedly limit Plaintiff's "ability to interact appropriately
11 with the general public" and moderately limit Plaintiff's work-related
12 abilities in several other respects (A.R. 295-96). Dr. Skopec also
13 stated that Plaintiff "likely cannot work with the public" (A.R. 297).

14

15 An Administrative Law Judge ("ALJ") found that Plaintiff has some
16 severe mental impairments, but retains the residual functional
17 capacity to work in contact with the public (A.R. 12-13). The ALJ
18 denied disability benefits, finding that Plaintiff can perform her
19 past relevant work as a supermarket courtesy clerk and fast food
20 server (A.R. 16). The ALJ's decision does not mention any of
21 Dr. Skopec's opinions (A.R. 10-18). The Appeals Council denied review
22 (A.R. 1-3).

23

24 **STANDARD OF REVIEW**

25

26 Under 42 U.S.C. section 405(g), this Court reviews the
27 Administration's decision to determine if: (1) the Administration's
28 findings are supported by substantial evidence; and (2) the

1 Administration used correct legal standards. See Carmickle v.
 2 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,
 3 499 F.3d 1071, 1074 (9th Cir. 2007). Substantial evidence is "such
 4 relevant evidence as a reasonable mind might accept as adequate to
 5 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401
 6 (1971) (citation and quotations omitted); see Widmark v. Barnhart,
 7 454 F.3d 1063, 1067 (9th Cir. 2006).

8

9 **DISCUSSION**

10

11 Social Security Ruling ("SSR") 96-6p states that "[f]indings of
 12 fact made by state agency medical and psychological consultants and
 13 other program physicians and psychologists regarding the nature and
 14 severity of an individual's impairment(s) must be treated as expert
 15 opinion evidence of nonexamining sources"¹ Consequently, ALJs
 16 "may not ignore these opinions and must explain the weight given to
 17 the opinions in their decisions." SSR 96-6p.

18

19 The ALJ erred by failing to mention the opinions of Dr. Skopec.
 20 See id.; Bain v. Astrue, 319 Fed. App'x 543, 546 (9th Cir. Mar. 12,
 21 2009) ("Here, the ALJ failed to discredit or incorporate the
 22 limitations enumerated by state agency consultant Frank Lahman,
 23 including that Bain was moderately limited in her ability to accept
 24 instructions and respond appropriately to criticism from supervisors
 25 and moderately limited in her ability to respond appropriately to

26

27 ¹ Social Security rulings are binding on the
 28 Administration. See Terry v. Sullivan, 903 F.2d 1273, 1275 n.1
 (9th Cir. 1990).

1 changes in the work setting. Accordingly, on remand the ALJ must
 2 address these limitations"); Hambrick v. Apfel, 1998 WL 329368, at *3
 3 (N.D. Tex. June 11, 1998) ("The ALJ's decision does not mention the
 4 weight he gave to the state agency review physician's opinions. The
 5 court cannot determine whether the ALJ, in contravention of the
 6 purpose for SSR 96-6p, ignored the opinion.").

7

8 The Court is unable to deem the error harmless. Dr. Skopec's
 9 opinions, if fully credited,² might have had a material effect on the
 10 ALJ's findings regarding Plaintiff's residual functional capacity and
 11 alleged ability to perform Plaintiff's past relevant work. For
 12 example, given Dr. Skopec's opinion that Plaintiff is markedly limited
 13 in her ability to interact appropriately with the general public, it
 14 appears likely that Dr. Skopec believes Plaintiff incapable of
 15 performing jobs that require contact with the general public,
 16 including Plaintiff's past relevant work. Furthermore, Dr. Skopec's
 17 opinions that Plaintiff is "moderately limited" in other work-related
 18 respects also must be considered.³

19

20 ² The ALJ need not necessarily credit Dr. Skopec's
 21 opinions, but must explain any refusal to do so. See SSR 96-6p.

22 ³ The Social Security regulations do not define the term
 23 "moderate" and Social Security case law suggests varying
 24 definitions. Martinez v. Barnhart, 2003 WL 22736530, at **3-4
 25 (W.D. Tex. Nov. 17, 2003) (and cases cited therein). If the ALJ
 26 has any uncertainty concerning the intendment of Dr. Skopec's
 27 opinions, the ALJ should inquire further of Dr. Skopec on remand.
 28 "The ALJ has a special duty to fully and fairly develop the record
 and to assure that the claimant's interests are considered. This
 duty exists even when the claimant is represented by counsel."
Brown v. Heckler, 713 F.2d 441, 443 (9th Cir. 1983). "In cases of
 mental impairments, this duty is especially important." DeLorme v.
Sullivan, 924 F.2d 841, 849 (9th Cir. 1991); see Tonapetyan v.
 (continued...)

1 When a court reverses an administrative determination, "the
2 proper course, except in rare circumstances, is to remand to the
3 agency for additional investigation or explanation." INS v. Ventura,
4 537 U.S. 12, 16 (2002) (citations and quotations omitted). Remand is
5 proper where, as here, additional administrative proceedings could
6 remedy the defects in the decision. McAllister v. Sullivan, 888 F.2d
7 599, 603 (9th Cir. 1989); see generally Kail v. Heckler, 722 F.2d
8 1496, 1497 (9th Cir. 1984).⁴

9

10 **CONCLUSION**

11

12 For all of the foregoing reasons, Plaintiff's and Defendant's
13 motions for summary judgment are denied and this matter is remanded
14 for further administrative action consistent with this Opinion.

15

16 LET JUDGMENT BE ENTERED ACCORDINGLY.

17

18 DATED: September 27, 2010.

19

20 _____/S/_____

21 CHARLES F. EICK
22 UNITED STATES MAGISTRATE JUDGE

23

24 ³(...continued)
Halter, 242 F.3d 1144, 1150 (9th Cir. 2001) ("Ambiguous evidence
25 . . . triggers the ALJ's duty to 'conduct an appropriate
inquiry'"); accord Smolen v. Chater, 80 F.3d 1273, 1288 (9th Cir.
1996); 20 C.F.R. §§ 404.1512(e), 416.912(e).

26

27 ⁴ The Court need not and does not adjudicate any of
28 Plaintiff's other challenges to the Administration's decision,
except insofar as to determine that a reversal and remand for
immediate payment of benefits would not be appropriate.